

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3570 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHAILALBHAI RANCHHODBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR AJ PATEL for Petitioners

MR SP DAVE AGP for Respondent No. 1, 2

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 01/07/97

ORAL JUDGEMENT

Heard Mr. Patel for the petitioners and Mr. S.P.Dave, AGP for the respondents. This petition has already been admitted on 6th May 1997 and Rule is made returnable on 24th June, 1997. The petitioners were permitted to develop dwelling houses in a scheme floated under Sec.21 of the Urban Land (Ceiling and Regulation) Act, 1976. It is the case of the petitioners that 80% of the area on which the scheme was to come up is already

developed though work is yet to commence in two Final Plot Nos. 181 and 228. Entire scheme was to be completed within five years from the date of sanction which has not been done so, and the scheme has been cancelled with respect to these remaining two final plots. The order of the appellate authority under Sec.33 of the Act dt. 24th April, 1997 to that effect is challenged in this petition.

2. Mr. Patel, learned advocate appearing for the petitioners brought my attention to two judgments of two Single Judges of this Court- firstly judgment of S.D.Shah, J. in Givndlal Chunilal Dalvadi Vs. State of Gujarat & Ors. reported in 1994(1) GCD 526 and secondly judgment of A.N.Divecha, J. in Shamjibhai Bhanjibhai Patel Vs. Competent Authority, U.C.C.,Surat & Anr. reported in 1995(1) G.L.R. 742. From these both decisions, he submitted that condition to complete the scheme within a particular period should be construed as directory one. The idea is that the scheme should be completed expeditiously. He submitted that since only 20% work requires to be completed and since, the remaining work could not be completed because of the circumstances beyond control of the petitioners, they ought to be permitted to complete it by extending time and regularising it by imposing fine, if required. Mr. Patel submitted that this can be done by court itself. I am of the view that proper course would be for the competent authority itself to examine as to what were the circumstances because of which the work could not be completed within time and as to what should be parameters on the basis of which appropriate penalty should be imposed and then to order the penalty for regularisation, if it decides to regularise.

3. Though Mr. Patel initially submitted that this court itself should pass order of regularisation, he subsequently submitted that petitioner will be satisfied with a remand and necessary direction.

4. Mr. Dave, AGP for the respondents submitted that the impugned order be maintained in its entirety. I am afraid that cancellation of the scheme in a situation like this is not something which was called for. It requires to be interfered with.

5. Hence in the light of the aforesaid two judgments, that part of the appellate order which cancels the permission with respect to Final Plot Nos. 181 and 228 is hereby interfered with. The petitioners are, however, not permitted to construct on these two plots

unless they obtain the clearance from the competent authority in pursuance to the order of remand passed by Appellate authority on 24th April, 1997. It will be open to the petitioners to point out to the competent authority the circumstances because of which the work could not be completed in these two plots and the time that they will require to complete the same etc. The competent authority will, thereafter in the light of the aforesaid two judgments or any other authority that may be cited before it, decide as to whether such extension should be granted and, if so, on what terms.

6. The competent authority will arrive on the decision within two months from the date of receipt of the copy of the order of this court. Rule is made absolute in the aforesaid terms. Direct service permitted.

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